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| APPLICATION NO.   | FILING DATE   | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/014,720  | 12/11/2001    | Ari Shaer            | 107,103             | 4119             |
| 22846   | 7590          | 12/15/2008           | EXAMINER            |                  |
| BRIAN ROFFE, ESQ<br>11 SUNRISE PLAZA, SUITE 303<br>VALLEY STREAM, NY 11580-6111 |               |                      | LEVINE, ADAM L      |                  |
| ART UNIT  | PAPER NUMBER  |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                   |
|------------------------------|--------------------------------------|-----------------------------------|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/014,720 | <b>Applicant(s)</b><br>SHAER, ARI |
|                              | <b>Examiner</b><br>ADAM LEVINE       | <b>Art Unit</b><br>3625           |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 August 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-6,8-12 and 21-29 is/are pending in the application.

4a) Of the above claim(s) 1-6,8 and 22-29 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 9-12 and 21 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) 1-6,8 and 22-29 are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on multiple dates is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

**DETAILED ACTION**

Applicant's amendments and remarks filed August 4, 2008, are responsive to the office action mailed November 1, 2007. Claims 1, 5-6, 9-10, 12, and 21 are currently amended. Claims 22-29 are new. Claims 7 and 13-20 have been cancelled. Five replacement drawing sheets have been received as have amendments to the specification. The specification amendments address discrepancies between the drawing descriptions and the figure numbers and resolve the issue of new matter raised in the previous office action. The specification amendments do not contain new matter. Claims 1-6, 8-12, and 21-29 are currently pending and examined in this office action.

***Election/Restrictions***

Restriction was required between invention I, claims 1-6, 8-12, and 21, drawn to methods for enabling an event organizer to plan an event while collecting additional sums charged for items and services by the system over and above a first price, classified in class 705, subclass 26, and invention II, claims 13-20, drawn to methods for creating and selecting templates of packages of several goods and/or services for use at an event, classified in class 705, subclass 26. Applicant made a provisional election without traverse to prosecute the invention of group I, claims 1-6, 8-12, and 21.

Applicant has affirmed this election.

A review of the newly amended claims and applicant's remarks indicates that, while claims 9-12 and 21 are still directed to invention I, claims 1-6, 8, and 22-29 are

now directed to a distinctly different invention from that of either previously described inventions I or II.

1. **Newly amended claims 1-6, 8, and 22-29 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:**

Invention III, claims 1-6, 8, and 22-29, is drawn to a method for enabling an event organizer to create a database of items, providing the organizer with funds equal to a second price charged for the items over and above a first price, and enabling the organizer to direct the provider of the item to forward the item to the organizer, classified in class 705, subclass 26.

Inventions I and III are directed to related processes. The related inventions are distinct if: (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed are not capable of use together and have a materially different design, mode of operation, function, and effect. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

The inventions are distinct, each from the other because of the following reasons:

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-6, 8, and 22-29 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Response to Amendment***

**Pertaining to the objection to the drawings in the previous office action**

The replacement drawing sheets figs. 1I – 1J and 25-27 were received on August 4, 2008. These drawings are acceptable, however, applicant has not addressed the remaining objections noted in the "Notice of Draftsperson's Patent Drawing Review," PTO-948, that accompanied Paper No. 051201. Examiner has not recommended the replacement drawings for entry in order to avoid confusion. Please see below for a more detailed treatment of this matter.

**Pertaining to the objection to the specification in the previous office action**

Examiner noted that the new matter objection in the previous office action may have resulted from an inadvertent substitution of the term "Information Template" instead of the term "knowledge template." Applicant has amended the disclosure to make clear that the terms are synonymous. This objection is withdrawn.

Pertaining to rejection under 35 USC 112, second paragraph, in the prior office action

All rejections made under 35 USC 112, second paragraph, in the previous office action have been adequately addressed. The amendments have necessitated additional grounds of rejection under the same statute.

***Response to Arguments***

Applicant's arguments filed August 4, 2008, have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the gift givers do not have any contact with the providers," "a limit on the ability of purchaser to purchase items from a database") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's arguments (and claim language) extensively directed at the intent of the users, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The intent of the user is irrelevant to patentability. It is the method used to implement the intent that must be distinguishable. Purchasing an item on someone else's behalf or to benefit

another is common in commerce and items purchased using the referenced prior art methods could without modification be delivered to or otherwise intended to benefit another. Information regarding the identity of the recipient or purchaser is not functional information.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Many of the event related limitations that applicant argues are absent from Bezos are clearly present in Robertson.

In addition, applicant's arguments with respect to claim 1 are moot in view of the required election by original presentation. Examiner considers the original references still applicable to claim 9.

### ***Drawings***

The replacement drawing sheets figs. 1I – 1J and 25-27 were received on August 4, 2008. These drawings are acceptable, however, applicant has not addressed the remaining objections noted in the "Notice of Draftsperson's Patent Drawing Review," PTO-948, that accompanied Paper No. 051201, a copy of which was included with the previous office action. Applicant should address item 3 of that form, directed to interlineations, erasures, over writings, copy machine marks, etcetera. MPEP 1.84(e).

Although the replacement sheets as noted are acceptable drawing figures by themselves, they have not been entered in order to avoid confusion as explained below.

With regard to all drawings including the previously filed replacement sheets, any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. **Additional replacement sheets may be necessary to show the renumbering of the remaining figures.** In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Sheets" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Examiner recommends the applicant submit a complete set of replacement drawings including all amendments and cancellations, and a complete set of annotated drawings showing the amendments and cancellations. In the most recently filed set of replacement sheets applicant appears to have intended to cancel some sheets and replace them with others, or merely consolidate the figure numbers after cancelling several drawing figures. Unfortunately this intent is not completely clear from the explanatory remarks. The examiner hopes that by filing a new set of drawings with an annotated set any possibility of confusion will be avoided. Examiner notes that, given the remaining objection in the previously transmitted PTO-948, almost all of the drawings would still need to be replaced anyway.

***Comment Regarding the Claims***

A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

A claim which depends from a dependent claim should not be separated by any claim which does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n).

The claims are not correctly arranged. Dependent claim 5 depends from dependent claim 3 but is separated therefrom by dependent claim 4, which does not depend from claim 3. Please note: this comment is intended for informational purposes

only. If applicant determines to file a divisional application with regard to invention III, these claims should be appropriately renumbered.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**2. Claims 9-12, and 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

The claims are directed to a purely mental process that does nothing more than manipulate an abstract idea. Mere recitation in the preamble (i.e., intended use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea. For subject matter to be statutory, the claimed process must be limited to a practical application of the abstract idea or mathematical algorithm. See *In re Alappat* 33 F.3d at 1543, 31 USPQ2d at 1556-57 (quoting *Diamond V. Diehr*, 450 U.S. at 192, 209 USPQ at 10). A claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result: i.e. the method recites a step or act of producing something that is concrete, tangible and useful. See *AT&T v. Excel Communications Inc.*, 172 F.3d at 1358, 50 USPQ2dat 1452.

The first step in determining whether a claim recites patent eligible subject matter is to determine whether the claim falls within one of the four statutory categories of invention recited in 35 USC 101: process, machine, manufacture and composition of

matter. The latter three categories define "things" or "products," while a "process" consists of a series of steps or acts to be performed. For purposes of section 101, a "process" has been given a specialized, limited meaning by the courts. Based on Supreme Court precedent and recent Federal Circuit decisions, a process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method is not a patent eligible process. See *In re Bilski*, 2008 U.S. App. LEXIS 22479. An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps.

A claim that involves both a mental process and one of the other categories of statutory subject matter (i.e., a machine, manufacture, or composition) may be patentable under § 101. See *Diehr*, 450 U.S. at 184 (holding a process that involved calculations using the "Arrhenius equation" patentable because the claim "involve[d] the transformation of an article, in this case raw, uncured synthetic rubber, into a different state or thing"). For example, we have found processes involving mathematical algorithms used in computer technology patentable because they claimed practical applications and were tied to specific machines. However, mental processes—or processes of human thinking—standing alone are not patentable even if they have practical application. The Supreme Court has stated that "[p]henomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work." *Benson*,

409 U.S. at 67 (emphasis added). In *Flook* the patentee argued that his claims did not seek to patent an abstract idea (an algorithm) because they were limited to a practical application of that idea—updating "alarm limits" for catalytic chemical conversion of hydrocarbons. 437 U.S. at 586, 589-90. The Court rejected the notion that mere recitation of a practical application of an abstract idea makes it patentable, concluding that "[a] competent draftsman could attach some form of post-solution activity to almost any mathematical formula." *Id.* at 590. Since all other features of the process were well-known, including "the use of computers for 'automatic monitoring-alarming,'" the Court construed the application as "simply provid[ing] a new and presumably better method for calculating alarm limit values." *Id.* at 594-95. The Court held the application unpatentable because "if a claim [as a whole] is directed essentially to a method of calculating, using a mathematical formula, even if the solution is for a specific purpose, the claimed method is nonstatutory." 437 U.S. at 595 (quoting *In re Richman*, 563 F.2d 1026, 1030 (CCPA 1977)).

Thus, to qualify as a statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**3. Claims 9-12 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos (Paper # 20071014; US Patent No. 6,029,141) in view of Robertson (Paper #20050204, US Patent No. 6,609,106).**

Bezos discloses allowing an organizer to set up a database of goods and services in connection with an event, allowing a user to purchase the gifts and services and providing a benefit to the organizer based on the difference between the purchase price and the price paid to acquire the items for resale to the user (see at least abstract). Please note: The desirability of the goods, and the event, are descriptive material and are not functionally involved in the recited steps of the method. Because they have no functional role in the method they are non-functional descriptive material. This descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983). MPEP 2106. It is the examiner's position that the desirability of the goods and services to the organizer, and the event context, are not distinguishing because an organizer can use the invention of Bezos in the same way, for the same purposes, and in the same context as the present application without modification and they would be

indistinguishable. The present claims fall squarely within the metes and bounds of the invention disclosed in Bezos.). Bezos further discloses:

- creating a database of a finite amount of goods and services: desired by the organizer for use at the event with an associated cost (see at least abstract, figs.2-4, column 3 lines 8-25, column 8 lines 32-59, column 11 lines 16-26).

Please note: The desirability of the goods and the intended eventual use of the goods is descriptive and is not functionally involved in the recited steps of the method. Because this information has no functional role in the method it is are non-functional descriptive material. This descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381 , 1385, 217 USPQ 401, 404 (Fed. Cir. 1983). MPEP 2106.); embodying the database in computer-readable media (see at least abstract, figs.1-2,5; column 1 line 62 – column 2 line 38);

- enabling consumers other than the organizer to access the database: (see at least column 1 lines 16-36, column 4 lines 58-64, column 6 line 59-column 7 line 5, column 11 lines 27-42), and commit to payment for a selected one or more of the desired goods and services, associating the manner of payment by the consumers other than the organizer with the selected one or more of the goods and services, and upon acceptance by a provider of the selected one or more of the goods and services of the manner of payment associated with the goods and services by the consumers other than the organizer, contractually obligating the provider of the goods and services to deliver the goods for the event and perform

the services at the event (see at least abstract, figs.10, column 1 line 62 – column 2 line 18, column 2 line 48 – column 3 line 7, column 6 lines 41-47).

Please note: a contractual obligation is an abstract legal construct that cannot be accomplished through a claim element in a patent of a method. To the extent the steps of offer, acceptance, etc., are enumerated as steps in this method they are nonstatutory subject matter, old and well known, and disclosed in the prior art.);

- generating benefit for the event organizer based on the contractual obligation: (see at least fig.3a, column 1 line 62 – column 2 line 18, column 7 lines 41-51, column 13 lines 1-8, column 18 lines 30-65);
- enabling the organizer to use the benefit to obtain goods: to be delivered for the event and services to be performed at the event, contractual obligation of the provider of the goods and services to deliver the goods and services for the event is established prior to the event such that the benefit for the event organizer based on the contractual obligation is generated prior to the event and thus the event organizer is enabled to use the benefit to obtain goods and services [for the] event prior to the event (see at least see at least fig.3a, column 1 line 62 – column 2 line 18, column 7 lines 41-51, column 13 lines 1-8, column 18 lines 30-65. Please note: the organizer is enabled to use the at least part of the difference in price to purchase gifts and services by merely using the system and method itself as a purchaser. All that is required is that a purchase “generating benefit” take place prior to the event. It would then naturally be

applied to goods or services purchased later, though still prior to the event, for use at the same event);

Bezos teaches all of the above as noted and teaches a) an organizer setting up a website with items chosen by the organizer, b) organizers marketing products on behalf of merchants, c) organizers compensated for sales through their websites, d) compensation to organizers based on items sold through the organizer's website.

Bezos however does not disclose:

- removing the selected one or more of the goods and services from the database:
- determining specific events or parties in a specified: geographical location, within a specified range, and displaying options to the consumers other than the organizer for payment for the desired goods and services for the specific events or parties determined to be in the specified geographical location within the specified time range;
- soliciting providers of goods and services: to commit to provide goods and services at the associated cost;
- determining whether a good or service desired for the event is the same: as a good or service desired for another event as contained in a database for the other event, and if so, notifying potential providers of the good or services of the presence of multiple requests for the same good or service.

Robertson teaches a) an organizer setting up a website with items chosen by the organizer, b) organizers marketing products on behalf of merchants, c) organizers

compensated for sales through their websites, and d) compensation to organizers based on items sold through the organizer's website, and Robertson also teaches:

- removing the selected one or more of the goods and services from the database: (see at least column 19 lines 29-34, column 28 claim 18. Please note: in this context updating the list of desired items clearly refers to deleting the purchased item from the list as this feature is also old and well known in the gift registry art and would be interpreted as such by any person of ordinary skill.);
- determining specific events or parties in a specified: geographical location, within a specified range (see at least Figs. 8,40,41; column 9 lines 33-37, column 21 lines 37-55, column 24 lines 54-65, column 25 lines 5-13); displaying options to the consumers other than the organizer for payment for the desired goods and services for the specific events or parties determined to be in the specified geographical location within the specified time range (see at least fig.36, column 23 line 65 – column 24 line 8);
- soliciting providers of goods and services: to commit to provide goods and services at the associated cost (see at least column 13 lines 5-18, 23-27; column 15 lines 19-31);
- determining whether a good or service desired for the event is the same: as a good or service desired for another event as contained in a database for the other event, and if so, notifying potential providers of the good or services of the presence of multiple requests for the same good or service (see at least column 13 lines 5-15, column 16 lines 50-59).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Bezos to include removing selected items from the database, soliciting providers of goods and services to commit to provide goods and services at the associated cost, determining whether a good or service desired for the event is the same as a good or service desired for another event as contained in a database for the other event, and if so notifying potential providers, determining specific events or parties in a specified geographical location within a specified range, and displaying payment options, all as taught by Robertson, in order to facilitate the completion of the commercial cycle to enable Bezos to function as intended, thereby increasing commerce and profits using the system.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Woolston; US Patent No. 5,845,265 (Dec. 1, 1998): Teaches method including creation of online database of items and creation of consignment relationship between organizers and providers of saleable items. Applicable to the method now claimed in claims 1-6, 8, and 22-29 of the present application.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ADAM LEVINE whose telephone number is (571)272-8122. The examiner can normally be reached on M-F, 8:30-5:00 Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571.272.6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey A. Smith/  
Supervisory Patent Examiner, Art  
Unit 3625

Adam Levine  
Patent Examiner  
December 5, 2008